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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION TWO

RICHARD E. LEE,

Plaintiff and Respondent,

v.

FELICIA R. FORD,

Defendant and Appellant.

B160298

(Los Angeles County  
Super. Ct. No. YC040457)

APPEAL from a judgment and order of the Superior Court of Los Angeles County. Bob T. Hight, Judge. Affirmed in part and reversed in part.

Lorden & Reed, Zshonette L. Reed; Felicia R. Ford, in pro. per., for Defendant and Appellant.

Richard E. Lee, in pro. per., for Plaintiff and Respondent.

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A resident of a condominium complex publicly leveled false accusations of dishonesty and thievery against a member of the condominium association's board of

directors. The board member sued the resident for defamation, and won. On appeal, the resident argues that the board member is a public figure who failed to prove that the resident's defamatory statements were made with actual malice. The resident also challenges the trial court's postjudgment award of costs. We affirm the judgment, but reverse and remand for further proceedings on the issue of postjudgment costs.<sup>1</sup>

### **FACTS**

Respondent Richard Lee is a police officer employed by the Los Angeles Unified School District. Appellant Felicia Ford is an airline employee. Lee and Ford are neighbors at the Inglewood Crossroads Condominiums (Crossroads).

Ford was dissatisfied with the Crossroads board of directors (the Board), and she was disruptive and adversarial at Board meetings. At the time, Ford was greatly in arrears on her homeowner dues, owing some \$10,000, and the Board had filed a lien on her unit to recoup the debt. In fact, Ford had liens placed on her property on at least three prior occasions due to her arrearages.

Ford recruited her neighbor Lee and other Crossroads homeowners to form a committee of concerned homeowners for the purpose of recalling the Board. Ford convinced her neighbors that the Board was mishandling homeowners' association funds. Through the efforts of Ford and the concerned homeowners' committee, Lee and two other committee members were elected to the Board.

Soon after Lee's election to the Board, Lee and Ford had a falling out. First, Lee told Ford that he would not support her bid to be appointed to a director's position on the Board. Second, Lee refused to accede to Ford's demands that the Board return money to her that she had given to pay her homeowner dues arrearages.

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<sup>1</sup> Respondent did not serve his brief on appellant's address of record; however, this court supplied appellant with a copy of respondent's brief. Appellant elected to reply to respondent's contentions at oral argument.

In retribution for what she perceived to be Lee's betrayal of her, Ford announced to other Crossroads residents that Lee was stealing money from the homeowners' association to buy accessories for his home and vehicle. Ford also publicly accused Lee of receiving kickbacks from contractors who worked at Crossroads.

Ford's accusations of wrongdoing were unsubstantiated. Lee paid for items for his home with his own personal checks. In any event, Board members like Lee do not have access to the association's bank accounts. Any disbursement of homeowner funds requires the approval of at least three Board members, and the checks are written by the Crossroads' property management company. The association does not issue credit cards to Board members. At trial, Ford admitted that she had no reason to believe that Lee stole association money.

Ford made similar, baseless claims that other Board members (apart from Lee) stole homeowners' money. The Board members were exonerated through police investigations. The accusation that Lee took kickbacks from contractors was unsubstantiated. Eventually, the Board sought an injunction against Ford, to stop her threatening and harassing behavior.

Ford filed a police report against Lee, claiming that he threatened her at a meeting. Lee's neighbors were questioned by the Inglewood police during the consequent investigation for making a terrorist threat. In fact, Lee did not threaten Ford. Nevertheless, Lee was obliged to inform his employer that he was being investigated for a crime. Lee's colleague at the police department noticed that Lee was very stressed and upset by the damage to his reputation, and by the bad work assignments Lee received during the investigation. Lee even offered to resign from his position to spare his employer any embarrassment.

Ford made additional complaints against Lee with the internal affairs division of Lee's employer, claiming that Lee had engaged in work-related dishonesty; i.e., that he worked while on disability leave. Lee was not ultimately disciplined following departmental investigations of Ford's complaints, which turned out to be utterly baseless:

Lee was not on disability leave during the period when Ford claimed he was working elsewhere. Lee testified that his life “has been torn apart” by Ford’s vicious behavior.

Lee sued Ford, alleging causes of action for libel, slander, and intentional infliction of emotional distress. The parties waived their right to a jury trial. Following a lengthy court trial, a judgment for \$5,000 was entered in favor of Lee, on his cause of action for slander. The court acknowledged that there was a conflict in the testimony, but found that Lee’s witnesses were more credible. Ford made unprivileged statements in public that imputed moral turpitude and criminality to Lee, including his purported theft of funds from the Crossroads homeowners’ association and receipt of kickbacks from contractors who worked at Crossroads. The court expressly rejected any testimony suggesting that Lee threatened Ford.

Ford appealed from the judgment.

## **DISCUSSION**

### **1. First Amendment Issues**

The First Amendment to the federal constitution guarantees freedom of speech. Defamation--written or oral injury to a person’s reputation--is not constitutionally protected speech. (*Shively v. Bozanich* (2003) 31 Cal.4th 1230, 1242; *Weinberg v. Feisel* (2003) 110 Cal.App.4th 1122, 1131.) There are, however, limitations on a state’s authority to award damages for defamation in cases involving a public official or public figure: these individuals cannot recover damages for a defamatory falsehood unless they prove ““that the statement was made with “actual malice”--that is, with knowledge that it was false or with reckless disregard of whether it was false or not.”” (*Khawar v. Globe Internat., Inc.* (1998) 19 Cal.4th 254, 262-263.)

At the close of Lee’s case-in-chief, Ford moved for a directed verdict, arguing that Lee failed to establish a prima facie case of defamation, because Lee is a public figure and he did not present evidence showing actual malice. The court declined to render a decision until the conclusion of the case. In its statement of decision, the court found that the motion for a directed verdict was moot. Ford now challenges the sufficiency of the evidence regarding actual malice.

*a. Public Figure Analysis*

Ford maintains that Lee is a limited purpose public figure, i.e., an individual who has voluntarily injected himself into a particular public controversy. By contrast, an ordinary private citizen is one who has not accepted a public office or assumed an influential role in ordering society. (See *Gertz v. Robert Welch, Inc.* (1974) 418 U.S. 323, 345, 351; *Khawar v. Globe Internat., Inc.*, *supra*, 19 Cal.4th at p. 263.) The ultimate issue of whether a plaintiff in a defamation action is a public figure is a question of law, subject to independent review for legal error. (*Khawar*, at p. 264.)

Ford cites no authority for the notion that a member the board of directors of a planned development homeowners' association is a public figure. At best, there is some authority for the proposition that homeowner associations conduct their board meetings in a public forum, even though the forum is limited to residents of the planned development. (*Damon v. Ocean Hills Journalism Club* (2000) 85 Cal.App.4th 468, 475.) The association's newsletter may also amount to a public forum, allowing criticism of association management practices. (*Id.* at p. 476.)

Ford exceeded the bounds of permissible activity as delineated in the *Damon* case. She did not limit her denunciations of Lee to homeowner meetings or to the association's newsletter. She leveled false charges against Lee outside of a public forum, and complained to Lee's employer, prompting an investigation against him.

A plaintiff cannot be characterized as a public figure unless there is evidence of a public controversy. (*Copp v. Paxton* (1996) 45 Cal.App.4th 829, 845.) Recent authority suggests that accusations of theft made by one member of an association against another member is a private controversy, not a public controversy, and does not implicate constitutional free speech guarantees. In *Weinberg v. Feisel*, *supra*, the plaintiff and defendant were members of a 700-member national association of "token collectors." Feisel decided that Weinberg, who was a retired police officer, had stolen one of Feisel's tokens during a show. Feisel began a campaign to oust Weinberg from the collectors' association, publicly accusing him of stealing the token. Feisel also contacted the police department where Weinberg worked, in an attempt to have Weinberg's concealed

weapon permit revoked due to Weinberg's purported dangerousness. (110 Cal.App.4th at pp. 1127-1129.)

Weinberg sued Feisel for defamation. The court concluded that Feisel's accusations against Weinberg, though made to a considerable audience of token collectors, was merely "a private dispute between private parties. The fact that defendant allegedly was able to vilify plaintiff in the eyes of at least some people establishes only that he was at least partially successful in his campaign of vilification; it does not establish that he was acting on a matter of public interest." (110 Cal.App.4th at p. 1134.) Moreover, "the fact that defendant accused plaintiff of criminal conduct did not make the accusations a matter of public interest." (*Id.* at p. 1135.)

The evidence in this case suggests that the dispute between Ford and Lee was a private dispute, stemming from Lee's refusal to support Ford's effort to be appointed to a position on the Board and his refusal to refund Ford's payment of her homeowners' association arrearages. Ford cannot bootstrap her private anger at Lee into a public controversy by vilifying Lee with false accusations of dishonesty.

*b. Proof of Malice*

Assuming, for purposes of argument, that Lee is a limited purpose public figure by virtue of his position on the Crossroads' Board of Directors, and further assuming that the dispute between Lee and Ford involved a public controversy, there remains the question of malice. The question of malice focuses on "the defendant's attitude, or state of mind, toward the allegedly libelous material published." (*McCoy v. Hearst Corp.* (1986) 42 Cal.3d 835, 847.) The court examines the record to determine whether there is "clear and convincing proof of a knowing falsehood or of reckless disregard for the truth." (*Id.* at p. 860.) "[T]hose facts that are germane to the central question of actual malice must be sorted out and reviewed de novo, independently of any previous determinations by the trier of fact." (*Id.* at p. 842.)

Ford's accusations that Lee committed acts of criminality and moral turpitude were entirely unsubstantiated. Ford, who closely monitored Board activities, knew or should have known that a Board member like Lee cannot unilaterally loot association

funds, because no single Board member has access to association bank accounts. Lee paid for personal items with his own checks, not with association funds. There is no evidence that Lee ever accepted kickbacks from the association's hired help. The evidence supports a finding that Ford's defamatory accusations were motivated by spite and vindictiveness, to retaliate against Lee for his refusal to accede to Ford's demands. Actual malice is "a state of mind arising from hatred or ill will, evidencing a willingness to vex, annoy or injure another person." (*Agarwal v. Johnson* (1979) 25 Cal.3d 932, 944; *Hassan v. Mercy American River Hospital* (2003) 31 Cal.4th 709, 718.)

In the very least, Ford's relentless vendetta against Lee shows a reckless disregard for the truth. In her trial testimony, Ford admitted that she had no reason to believe that Lee stole anything. Ford denied that she ever accused Lee of theft. Yet numerous witnesses testified that they heard Ford publicly accuse Lee of theft. The trial court found these witnesses to be credible, unlike Ford herself, whose testimony was duplicitous and unbelievable.

## **2. Costs Award**

On June 12, 2002, the trial court rendered its statement of decision and gave judgment to Lee for \$5,000, plus unspecified costs of suit. Notice of the court's decision was sent to the parties on that same day. A formal, signed judgment, filed on June 26, 2002, left blank the space for an award of costs.

On July 10, 2002, Lee filed a memorandum of costs with the court, seeking to recover \$11,562 in expenses. The memorandum was served at what apparently is or was Ford's home address in Inglewood, even though Ford was represented by counsel at trial. Moreover, the proof of service was apparently signed by Lee himself, rather than by someone who was not a party to the action. On July 16, 2002, Ford filed her appeal from the judgment.

In April 2003, Ford filed a motion to tax costs. She argued that she was never served with Lee's memorandum of costs and was thereby deprived of an opportunity to challenge it. Ford's motion was heard on June 5, 2003. The court denied the motion without prejudice, because the action was stayed pending this appeal.

Lee's costs memorandum was timely filed within 15 days of judgment. (Cal. Rules of Court, rule 870(a)(1).) However, there may have been irregularities in Lee's service of the memorandum, and Ford may have been deprived of her right to challenge the costs claimed by Lee. Under the circumstances, we shall remand the case to the trial court, to allow it to rule on Ford's April 18, 2003, motion to tax costs.

**DISPOSITION**

The judgment awarding \$5,000 to Richard Lee is affirmed. To the extent an order was entered awarding \$11,562 in trial costs to Lee, that order is reversed, and the case is remanded to the trial court to enter an award of trial costs after considering Lee's July 10, 2002, memorandum of costs and Felicia Ford's April 18, 2003, motion to tax costs. Lee is awarded his costs on appeal.

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BOREN, P.J.

We concur:

NOTT, J.

ASHMANN-GERST, J.